

**THREE MEMBER DUE PROCESS HEARING PANEL
EMPOWERED PURSUANT TO 162.961 R.S.MO.**

HEARING DECISION

Student's Name:

Parent's Name:

Attorney for Parents:

**Mr. Ramon J. Morganstern
Attorney at Law
200 South Hanley Road, Suite 1103
St. Louis, MO 63105**

Local Education Agency:

**Northwest R-1 School District
2843 Community Lane
P.O. Box 500
House Springs, MO 63051-0500**

Agency Attorney:

**Mr. John F. Brink
Thomeczek Law Firm
1120 Olivette Executive Parkway
St. Louis, MO 63132**

Date of Report:

January 16, 2004

Hearing Officers:

**Patrick O. Boyle, Chair,
Dr. Terry Allee and
Mr. Richard Goldbaum**

**Three Member Due Process Hearing Panel
Empowered Pursuant to 162.961 R.S.Mo.**

HEARING DECISION

ISSUE

Parents disagree with the student's expulsion from school for bringing a fire arm to class and seek reimbursement for tuition at a parochial school, expungment of the student's discipline record related to the fire arm incident and attorney's fees.

TIME LINE

Parents' request for a due process hearing was received by the Missouri Department of Elementary and Secondary Education (DESE) on April 2, 2003. On May 6, 2003 the time for decision was extended to October 10, 2003 by consent of the parties.

The Local Education Agency (LEA) filed a Motion for Summary Judgment or in the alternative a motion that parent submit a more definite and certain request for due process on May 20, 2003. Parent was ordered to respond to the LEA's Motion on or before July 28, 2003 by order of June 26, 2003. Parent was further ordered to submit a more definite and certain request for due process on or before July 28, 2003 by order of June 30, 2003.

Parent submitted a motion to extend the time for decision on August 14, 2003. An order extending the time for decision to November 1, 2003 was entered on September 8, 2003.

Parent filed an amended request for due process on August 22, 2003 in response to the order of June 30, 2003. The LEA renewed its Motion for Summary Judgment and, the motion was set for hearing on October 8, 2003. At the hearing, parent was granted until October 17, 2003 to respond to the LEA motion and, the time for decision herein was extended to January 16, 2004 by consent of the parties.

On December 9, 2003, the panel issued an order setting forth issues which could be raised by the parent based upon the facts and allegations before the panel. The parent was ordered to file an amended request for due process stating the specific issues to be submitted to the panel and the remedy sought on or before December 29, 2003.

Parent has filed a response to the panel order and requests reimbursement for tuition paid to Lutheran High School South, expungment of the student's discipline record for bringing a fire arm to school, attorney's fees and such other relief as to the panel seems proper.

The LEA's Motion for Summary Judgment is hereby granted within the time agreed for decision of the parent's request for due process.

FINDINGS OF FACT

1. Student was born on and has been identified as a child with a disability under IDEA. (Ex A of Respondent's Motion)
2. Student brought a fire arm to school on January 25, 2001. (Ex. B, C, & D of Respondent's Motion)

3. On January 30, 2001 an IEP meeting was held to conduct a functional behavior assessment and manifestation determination. (Ex. B & C of Respondent's Motion)
4. On March 8, 2001 Student was expelled from the LEA. (Ex. D of Respondent's Motion)
5. Student began attending a parochial school during the Fall of 2002. (Ex. Q of Respondent's Motion)
6. The parties have agreed to treat October 23, 2002 as the filing date for the pending request for due process.

DECISION AND RATIONALE

The LEA's Motion for Summary Judgment is hereby granted.

This is a panel of limited jurisdiction and lacks the authority to grant the relief sought by the student as set forth in the pleading filed by student's attorney on December 31, 2003.

Student is entitled to free appropriate public education. The panel may not place the student in a parochial school or award money damages, attorney's fees and expunge educational records as sought by the parents in this proceeding.

APPEAL PROCEDURE

Either party has the right to appeal this decision within 45 days to a State Court of competent jurisdiction pursuant to Chapter 536 of the Revised Statutes of Missouri, or to a Federal Court.

Panel Members Support Decision

Terry Allee
Richard Goldbaum
Patrick O. Boyle

Panel Members Opposing Decision